

## **CHAPTER 1. GENERAL RULES AND DEPARTMENT ORGANIZATION**

### **SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

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#### **4A: 1-1.1 Purpose**

The purpose of these rules is to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with Title 11A, New Jersey Statutes. See N.J.S.A. 11A:1-2.

#### **4A: 1-1.2 Scope, applicability and invalidation**

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with these rules.

(b) These rules shall apply only to the career service unless otherwise specified.

(c) These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. The Commissioner or the Board may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purpose of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the rules shall not be affected by such determination.

#### **4A: 1-1.3 Definitions**

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

"Appointing authority" means a person or group of persons having power of appointment or removal.

"Appointment" means the offer, acceptance and commencement of employment.

"Base salary" means an employee's rate of pay exclusive of any additional payments or allowances.

"Board" means the Merit System Board.

"Career Service" means those positions and job titles subject to the tenure provisions of Title 11A, New Jersey Statutes.

"Certification" means a list of names presented to an appointing authority for regular appointment.

"Class code" means a designation assigned to job titles in State Service with ranking based upon an evaluation of job content.

"Closing date for examination" means the date by which an applicant for an examination must meet all of the requirements contained in the examination announcement.

"Commissioner" means the Commissioner of Personnel.

"Days" means calendar days unless otherwise specified.

"Demotion" means, in local service, a reduction in title or scale of compensation, and in State service, a reduction in class code.

"Department" in local service, where not otherwise defined by statute, means the largest type of organizational unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organizational unit for the purpose of administering the political subdivision. In State service, "department" means a principal executive department of State government.

"Disposition" means the written report of actions taken by an appointing authority regarding a certification.

"Eligible list" means a roster compiled or approved by the Department of Personnel of persons who are qualified for employment or reemployment.

"Filing date for examination" means the date by which an application for an examination must be received in the office designated in the announcement. When mailed, the filing date is the date by which a properly addressed application must be postmarked.

"Fine" means a disciplinary penalty which requires the payment of money or the performance of service without pay or at reduced pay.

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

...

"Immediate family" means an employee's spouse, domestic partner (see section 4 of P.L. 2003, c. 246), child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household.

...

"Layoff" means the separation of a permanent employee from employment for reasons of economy or efficiency or other related reasons and not for disciplinary reasons.

"Local service" means employment in any political subdivision operating under Title 11A, New Jersey statutes.

"Open competitive examination" means a test open to members of the public who meet the prescribed requirements for admission.

"Part time employee" means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

"Permanent employee" means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

"Position" means the assignment of specific duties and responsibilities requiring the employment of one person.

"Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

"Promotional examination" means a test open to permanent employees who meet the prescribed requirements for admission.

"Provisional appointment" (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

"Regular appointment" (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

"Removal" means termination of a permanent employee from employment for disciplinary reasons.

"Senior executive service" means positions in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

"State service" means employment for the State of New Jersey.

"Suspension" means temporary separation from employment for disciplinary reasons.

"Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

"Title scope" means a defined group of job titles used as a factor in determining eligibility for promotional examinations. Title scope may also include educational, experience and other specific requirements.

"Title series" means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

"Unclassified service" means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

"Unit scope" means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

"Working test period" means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

#### 4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to > N.J.A.C. 1:30-3.6.

#### 4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

#### 4A: 1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;
3. Final orders of the Commissioner or Board; and
4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) See N.J.A.C. 4A: 4-2.16 concerning examination records.

#### 4A: 1-3.1 General provisions

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;
2. Merit System Board; and
3. Such subdivisions as the Commissioner may deem necessary.

#### 4A: 1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;
2. Serve as principal executive and request officer of the Department;
3. Maintain a management information system to implement Title 11A, New Jersey Statutes;
4. Establish necessary programs and policies for the State and local service;
5. Assist the Governor in personnel and labor relations;
6. Render final administrative decisions on appeals of classification, salary, layoff rights and State noncontractual grievances;
7. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;
8. Make required reports to the Governor and Legislature;
9. Approve appointments in the State and local service; and
10. Perform such other duties as prescribed by law and these rules.

#### 4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;
2. Render final administrative decisions on appeals and on other matters referred by the Commissioner, except for those matters listed in > N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;
3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;
4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity;  
and
5. Perform such other duties as prescribed by law and these rules.

#### 4A:1-4.1 Delegation to appointing authorities

(a) The Commissioner may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;
2. Announcing examinations and collecting applications;
3. Administering examinations prepared by the Department of Personnel;
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles; and
6. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the Commissioner. Appointing authority employees in carrying out delegated functions are also responsible to the Department of Personnel in performing such functions. The delegation memorandum shall contain:

1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The Department of Personnel representative who will have primary responsibility for supervision of the delegation;
4. The duration of the delegation, which in no event shall exceed three years, but may be renewed; and
5. Provisions for appropriate notice advising of the delegation and stating the name, address and telephone number of the representative of the appointing authority and Department of Personnel employee to be contacted in case of complaints.

(c) Department of Personnel staff may be assigned to assist in performing the delegated functions.

(d) The Commissioner may cancel, modify or limit the delegation order at any time.

(e) The following functions may not be delegated:

1. The construction of an examination;
2. Appeal decisions of the Department, Commissioner or Board; and
3. A function of the Board.

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings effected by the delegation.

(g) The Department of Personnel will conduct appropriate audits of delegated functions.

#### 4A: 1-4.2 Consolidation State service

(a) The Commissioner, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:

1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the Commissioner may transfer necessary employees, positions, funding and equipment to the Department of Personnel from other State departments.

#### 4A: 1-4.3 Pilot programs

(a) The Commissioner may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and these rules.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the Commissioner and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;

4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A, New Jersey Statutes;

5. A summary of appointing authority consultations with negotiations representatives;

6. Evaluation criteria;

7. A statement identifying the sections, if any, of these rules or of Title 11A, New Jersey Statutes with which the program is at variance; and

8. Such other information as required by the Commissioner.

(e) The Commissioner shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The Commissioner may accept, modify or reject the program and establish appropriate conditions.

#### 4A:1-5.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"ADA" means the Americans with Disabilities Act, > 42 U.S.C.A. § 12101 et seq.

"Agency" means the New Jersey Department of Personnel.

"Designated decision maker" means the Commissioner of Personnel or his or her designee.

#### 4A:1-5.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, > 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to > N.J.A.C. 4A:1-5.5 through 5.8.

#### 4A:1-5.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

#### AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 4A:1-5. As those rules indicate, grievances should be

addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator

New Jersey Department of Personnel

CN 317

Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, > N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

#### 4A:1-5.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator

New Jersey Department of Personnel

CN 317

Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.



(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in > N.J.A.C. 4A:1-5.5 through 5.8.

#### 4A:1-5.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in > N.J.A.C. 4A:1-5.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, > N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

#### 4A:1-5.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at > N.J.A.C. 4A:1-5.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

#### 4A:1-5.7 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

##### Americans with Disabilities Act Grievance Form

Date: \_\_\_\_\_

Name of grievant: \_\_\_\_

Address of grievant: \_\_\_\_

Telephone number of grievant: \_\_\_\_

Name, address and telephone number

of alternate contact person: \_\_\_\_

\_\_\_\_

\_\_\_\_

Agency alleged to have denied access:

Department: \_\_\_\_

Division: \_\_\_\_

Bureau or office: \_\_\_\_

Location: \_\_\_\_

Incident or barrier: \_\_\_\_

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

\_\_\_\_

\_\_\_\_

\_\_\_\_

\_\_\_\_

\_\_\_\_

\_\_\_\_

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

\_\_\_\_

\_\_\_\_

\_\_\_\_

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at > N.J.A.C. 4A:1-5.4.

#### 4A:1-5.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.